

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
February 21, 2006, at 9:00 a.m.
Room 303 State Capitol Building
Helena, Montana

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Secretary of State Brad Johnson, Superintendent of Public Instruction Linda McCulloch and State Auditor John Morrison

Mr. McGrath moved for approval of the minutes from the January 17, 2006, meeting of the Board of Land Commissioners. Seconded by Mr. Johnson. Motion carried unanimously.

BUSINESS CONSIDERED:

1205-6 FINAL APPROVAL OF DNRC/MILLER LAND EXCHANGE

Ms. Sexton gave the Board an update from last month on what has transpired. She said first of all, the FWP Commission did pass the property exchange with the Wetzsteons. We also received a letter from Mr. Bugbee attesting to the fact that the \$320,000 and the additional access through Mr. Miller's property would still remain on the table. We did add a notice in the agenda item regarding land banking and the opportunity to perhaps use the Lincoln property for land banking. We just did a resuscitation basically of the rules noting that most land purchases would be in the \$400 – \$500 range, the return of value for investment would be looked at. It is a twenty-year timeframe which, for timber property, is a pretty short timeframe to look at return investment. There is an opportunity there but the Board can read through it to see how the analysis is used for land banking. Senator Laible from the Bitterroot did submit a proposal which was reviewed by my staff as well as by Mr. Bugbee. Such a proposal, if we did entertain it, would have to go back through the process and we would have to amend our analysis. I have a letter from Mr. Bugbee on behalf of Mr. Miller rejecting that proposal. There are two letters on this, one refers to the cash donation and this is to mitigate concerns raised by the public, it is restricted, and he talked also about restricting conservation easements on his ranch, the donation of the non-vehicular public access and the donation to DNRC for the additional \$320,000. Mr. Miller also notes regarding Senator Laible's proposal, that the proposal is based on assumptions that the Sula lands have only the value indicated by a hypothetical appraised market value and that proposal ignores the appraised market value of the property and the Board's adopted appraisal policy which establishes a negotiation range based on two appraised numbers. The exchange proposal by Mr. Miller meets those requirements of the Land Board. Therefore, Mr. Miller does not accept the proposed offer by Senator Liabile. For an update on the Wetzsteon situation, I know this is a separate proposal, the Board has expressed an interest in it. We do, again, have FWP's okay to go ahead with the purchase by FWP of the Wetzsteon property with the Rocky Mountain Elk Foundation acting as an intermediary. The Elk Foundation has been working with FWP and DNRC on the option. At this point not all of the Wetzsteon's have signed the option. They hope to do a 1031 exchange because of tax issues. They have expressed, through their attorney, a strong interest to me to continue with this option and that they do definitely want to arrange either an exchange or a sale of their property involving DNRC and FWP. But at this point in time we do not have a signed option, although we have a strong commitment on their side to continue working with us. That is all the updated information I have. We do have maps of the property. The additional map we put together shows the proposed project in this vicinity. I might add the Ravalli County Fish and Wildlife Association did hold a meeting two weeks ago and my staff and staff from FWP attended it talking about the exchange and the

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process and the different proposals that are on the table. They did take a vote, the Ravalli County Fish and Wildlife Association, a third of their members voted. Nineteen opposed and nine supported the exchange. Again, only about 30% of their members voted. The map indicates the parcels that would be involved in the Miller exchange, the parcels that would be involved with the CB Ranch exchange and the Wetzsteon property. Should all these projects come to fruition there will be a net gain of 200 actual acres in the Bitterroot and a net gain of about 800+ acres of accessible property in the Bitterroot. This is a complex picture and this is an update.

Governor Schweitzer said we are going to public comment now. Let's have the proponents speak first.

Proponents to the Miller Land Exchange

Bruce Bugbee, representing John Miller, said most of the points have been covered extensively. I think all of them boil down to basically three points: the appraisal, publicly huntable elk, and the fiduciary responsibility of the Board, the return to the school trust. The appraisal points have been made. I think one point I'd like to address is that some have advanced the theory that the high appraised value is in fact the real appraised value because there is access for subdivision development. There are three ways in here, the Two Percent Road, the Pasture Draw Road, and what may have been the old stagecoach road. We have researched those, others have researched those, what we've found is that there doesn't appear to be any opportunity for access for subdivision development purposes by any of those routes. Doing that would involve extensive public review and it is simply not likely to happen. It does not exist at this time.

On the publicly huntable elk issue we readily acknowledge a reduction in acreage based on the land exchange, however, not a reduction in habitat. And that's the main point. To hunt elk there must be elk. For there to be elk, they must survive the winter and the most limiting factor to their survival is critical winter range. In the Bitterroot drainage there are 627,000 acres of winter range for elk, of which 139,000 acres are critical winter range. Of these totals, approximately 23,000 acres are considered critical winter range in the Sula Basin, the French Basin. The critical winter range in the Sula Basin is distributed approximately 70% on public land and 30% on private land. The portion that is on private land is divided into thirty properties. The only property in the basin where the winter range is permanently protected on private land is Mr. Miller's Ranch on the existing conservation easement. That easement will be extended to the land once acquired from the state. That protection will stay in place.

The final point, and one that I think is often lost, is the fiduciary responsibility of this Board and what makes this land different from all other public lands state and federal, and that is the obligation to the school trust. The revenue projections show that the revenue will be more than double, and over a long period of time this means more than \$1 million more to the school trust based on this trade. None of which happens if this trade doesn't go through.

Ed Tinsley, Lewis and Clark County Commissioner, said a couple of questions came to my mind. Is this good for Montana? Absolutely, it is good for Montana. Mr. Bugbee just spoke about the recitations regarding the acres that are going to be added and the value added to the portfolio. Is it bad for Ravalli County? Absolutely not. They have net positive acres without the Wetzsteon property, they will have other net acres from other land exchanges that are going through. It is going to be net acres positive for Lewis and Clark County as well. The people of Lincoln asked us to speak for them, they made a decision to move their community from a resource-based economy to a recreation-based economy. Will this be good for them? Absolutely. It will be a shot in the arm for Lincoln, Lincoln needs it, they are a resilient group of people but they have fallen on hard times in the recent past with fires and loss of potential

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industry coming to town. This is good for them. The point I want to leave with you is these are resilient people, they have played by the rules, they have done their part and they deserve this land exchange.

Senator Dave Lewis, SD 42, said even though this particular piece of land in Lincoln is across the highway from SD 42 I've heard it from a lot of people in the Lincoln area, all the things Commissioner Tinsley said are right on point. I know you had a lot of information on this and I read all the minutes from past meetings. I hope this will be taken care of. I go back a long way in this area and have spent a lot of time up there in the last 40 years. As Ed said this is going to work in perfectly for the people in Lincoln as they try to build this winter sports-based economy and in the summer time there is a lot of ability to go in and recreate. This will fit in where they need to go. We're going to have a lot of land exchanges in northern Powell County, central Powell County and across the district through Ravalli County. What Ed said really should be kept in mind, what's best for the people of Montana. I think this certainly works best for the entire state.

Representative Rick Ripley, HD 17, said Lincoln is part of HD 17 so I am here representing the good constituents in the Lincoln area. Today you'll hear from both proponents and opponents, what is good for Ravalli County, what is good for Lincoln, what isn't good for Ravalli County and what isn't good for Lincoln. And I, too, am here to say what is good for my particular constituents but the ultimate question is, what is best for Montana. I believe this land exchange is best for Montana and it should go through. I'll tell you why, its because this exchange allows the state to acquire higher revenue generating from the state lands. That is very important to K-12 education, and that's the ultimate goal of this exchange as I see it. Not the winners and losers, not our local areas, but the children and the constituents of Montana . Please support the exchange.

Hank Goetz, Blackfoot Challenge, said we have consistently supported this project as part of our larger Blackfoot project because the people of Lincoln have supported it and have asked us to go along with it. If this does not go through, then according to our disposition plan which we've told at all our public meetings is we will sell the land to private individuals with conservation easements on it. The disadvantage long term is we obviously are not going to be able to, if we follow that scenario, guarantee the level of public access that we would have under DNRC, plus it means we are going to have to raise funds we don't have to purchase conservation easements on this land. For that reason, we hope you support this exchange.

Opponents

Senator Rick Laible, SD 44, said as usual I find myself torn. I, of course, believe the Lincoln acquisition is a great acquisition for the state. But at what cost? I ask all these people here from Lincoln, what would happen if the table were turned? What if we were acquiring land in Ravalli County at the expense of the area in Lincoln? Would they be as supportive of this? I think not. I am disappointed the compromise we put together was not accepted. I was really surprised that even the dialogue didn't come forward. We had a fair exchange of values, there was no money required by Mr. Miller. Again, we've got the \$320,000. And Montana got the Lincoln land. I didn't have any response from Mr. Miller's representatives in regard to the compromise. There was no finding of common ground, there was no consensus building, at least none I was aware of. I am disappointed that a solution that could've borne great fruit for this state was cast aside because Mr. Miller didn't feel it was to his advantage. It wasn't even to his advantage to discuss it. Let's talk about fair values. As we've said in every meeting we've been in, before we came to the first meeting it was a straight 800 acres for 1,400 acres. Second meeting, we got \$160,000 more money. Now its more fair. At the last meeting, another \$160,000, worth \$320,000. Is that really the number? I guess the bigger question is the process. I am happy about the

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Wetzsteon property, I am hopeful that that still continues but as the department has said, this is stand alone, this has nothing to do with the Miller/DNRC/Sula land exchange.

Let's talk about the process. Before I got involved in this I really didn't understand what the process was. But now I have concerns. The values we're using for this land exchange... we have an appraisal done by the department at their request and we're using that to balance with an appraisal done by the owner. So we've come to a compromise appraisal and I don't think that is the right number. Here is the thing about the trust. We've heard today that the trusts are going to be the big recipients of this, that this is all about the trusts. When we had the public comments at the beginning, why weren't the trusts identified? Does the Land Board know today what the impact to the trust is going to be? Did you know that there are two trusts involved in the Sula lands? One is the common school and one is the capital fund. Were you told that? Was it part of the public notice? There was nothing in the public notice that talked about if we acquire the Lincoln land which trust is it going to be the recipient of the Lincoln land? Do we know that? I don't think we do. I don't think the department did an analysis of the trusts until sometime in January. That was prompted by some concerns raised here. The common school trusts, which everybody is always concerned about, is a very small percentage of the Sula land. In actuality most of it belongs to the public buildings. A watchdog group we have in this state, MonTRUST, which is the watchdog for all of us to help us make sure the trust process works and that the Board gets the information it needs, didn't know there were two trusts up in Sula either. The department didn't do the trust analysis. You don't have it. The analysis of the trust and the revenue that produces off that trust ought to be part of what is presented to the Land Board.

Let's talk about the donations of \$160,000 and now \$320,000, remember this is stand alone. In the department's file the department believes the \$160,000 and now the \$320,000, is mitigation for loss of public hunting grounds and stands alone as a donation only. Mr. Miller believes through his agent that the donations were added in there to "sweeten the pot" to bring the values of the land trades to closer balance because they knew the values were way off. The department in its own file has "we're going to sweeten the pot Mr. Miller is going to pony up more money." Remember, the donations are stand alone even though we've heard they are going to buy land, the donations go to the fund in the department and the Board has to make the determinations of what lands are to be purchased. Otherwise it is just a donation that increases the cash balance of the department's account. Is it a donation or is it a purchase of land? Which is it? If it is a stand alone donation, then we are giving up 800 acres of land worth \$3.4 million for 1,400 acres worth \$2 million. We are \$1.4 million short. It means we are subsidizing Mr. Miller's acquisition by \$1.4 million. If \$160,000 and the \$320,000 is to sweeten the pot, that is to bring the values closer together, then the state is selling either 37 acres at \$160,000 or 74 acres on the stand alone basis. If the state is going to sell these small slivers of land, the 37 acres and the 74 acres, they must do it at public auction. That is according to Section 77-2-321, MCA. It has to go to public auction if you are going to sell slivers of land. DNRC must identify, according to the code, which piece of property is to be sold and sell it at public auction. Actually, this has been a very good debate, it has been so good that now we're going to take this up as part of the LFC agenda for this year as well as the EQC. The process is flawed. Not that DNRC isn't following the process, but it's flawed in the sense that here are the questions: Is there a role for cash donations in the exchange of state-owned lands? Is it in the best interest of the trust to significantly reduce public access in one area of the state to improve public access in another? It is a philosophical question. Do we take from one and give to another? Is a cash payment to mitigate access in the best interest of the state? Since when are two trusts affected by this trade, which trust would benefit? It appears that Mr. Miller is not willing to find compromise on this trade. In an article in the *Missoulian* it said, talking about this same type of land issue, a comment was made "we should urge county attorneys and courts to enforce the laws guaranteeing anglers, hunters, hikers, access to streams

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and public lands. Too often out-of-staters are buying large ranches and homes and denying Montanans their legal rights to access." I would ask you please reject this land exchange. Let's start over.

Linda Habeck, Secretary Ravalli County Fish and Wildlife Club, said I am making a statement our President prepared. The Ravalli County Fish and Wildlife Association has been in existence since the early 1900's and consists of 120 sportsmen and women who are avid outdoor enthusiasts. On January 23, 2006, we held a meeting regarding the Miller land swap for our general membership as well as other citizens of the county. At that meeting, Mack Long, Montana FWP, and Tony Liane, Montana DNRC, explained the details of the land exchange including pros and cons for both Lewis and Clark and Ravalli counties. Following that meeting we composed a letter that was mailed to each member asking them to indicate their views on the exchange. We received replies from approximately 30% of our membership, the overwhelming majority of which were opposed to the exchange. While we recognize and appreciate the efforts put into the Blackfoot Challenge and the benefits this project will afford to the wildlife in the area we feel we must oppose the exchange on the grounds that it is not in the best interest of the wildlife and citizens of Ravalli County. The ground in question is prime winter elk range as well as habitat for mule deer and big horn sheep herds. Privatizing the land could result in detrimental effects to these animals the club fought so hard to protect. As a wildlife association dedicated to maintaining and improving habitat for wildlife we also feel it is our obligation to protect and preserve these wildlife populations and their habitat. Additionally, Ravalli County is one of the fastest growing areas in the State of Montana, public access to both state and federal land is becoming more and more difficult. Loss of the Sula land will not only result in the loss of public land but access to public land that will become land locked by private ground. We feel it is our obligation to fight and maintain public ground and access as any public ground in our county is invaluable to our current citizens as well as future generations.

Tom Powers, Foundation for North American Wild Sheep and the Mule Deer Foundation, said we applaud the hard work of the Blackfoot Challenge group to save the lands in the Lincoln, Montana, area. We believe the 1,458 acres in the Lincoln area should be purchased. We, however, do not believe the 800 acres of prime public land in Ravalli County should fall into private ownership to accomplish this. Privatizing the land could result in detrimental effects on the wildlife. This is prime winter elk range and habitat for bighorn sheep and mule deer. Public access to both the state and federal land must not be lost. Through the efforts of the R.C.F.W.A. we fought to protect the big horn sheep herd in this area and did so. Now in addition to having a trophy class big horn sheep herd in this area, we have a trophy mule deer area. Once again, through the efforts of the R.C.F.W.A. and working with Montana FWP the premier trophy mule deer hunting district for the State of Montana has been created. We now have three reasons to protect this valuable land, elk, big horn sheep, and mule deer. This is why we once again join in the support of the R.C.F.W.A. to protect wildlife resources that are so valuable to the people of Ravalli County and the State of Montana. The Foundation for North American Wild Sheep and the Mule Deer Foundation with some 15,000 members are in full support of the efforts of the R.C.F.W.A. to stop this land exchange

Senator Jim Shockley, SD 45, said I'd like to thank the Board for its time and to the Attorney General I thank you for getting involved with the Wetzsteon property, we all appreciate that. I think everybody concerned thinks they are acting in the public interest. But the money isn't legal. First of all when we got involved it was \$1,300 per acre with timber. That was done by Mr. Miller's appraiser and it was done before the EA was finalized, so they didn't have enough information. If I hire the appraiser, I get the appraisal I want. Assuming for the moment the department can lawfully average, it is starting from a bogus average, the bottom is bogus because you can't use that average because it isn't legitimate. Secondly, I don't think you can average lawfully. You have to sell it at the highest price you can. Now, \$4,300 doesn't mean it is \$4,300, it can be higher or lower. You can't just average. You have to use it for

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the highest and best use. The department says nobody could subdivide this. But trust me, with eight months access over the Two Percent saddle from Rye Creek you could get people that would pay \$4,300 per acre for 10-20 acres lots in a heartbeat. But those people don't live there in January and February, they live there in the summer, fall, and spring. The Wetzsteon property hasn't been bought yet. The figures they are talking about are \$2,150 to \$2,500. For the Wetzsteon property you got \$2,500 and it has no deeded access. If we pay \$2,500 for that with zero access how can the department say this other property which has much better access is only \$2,900? When we got involved the value on the property up there was \$1,300 per acre. Mr. Miller has thrown in another \$320,000. That brings that value up to \$1,500 per acre. It is really worth \$4,300 or very close to it. Mr. Miller will also get a conservation easement which will further reduce his price. Let's talk about the minerals. It's the duty of the department and the policy of the department to get the whole thing, the top and the bottom. All we are doing is getting the trees at Lincoln. The mineral estate is owned by Arco and Canyon Resources. If somebody wants to mine up there then we aren't going to be able to log. Of course we will be compensated, but we won't be able to log long term. The Wetzsteon deal hasn't gone through, I hope it does but it hasn't right now and the policy of the department is not to divide state forests. Without the Wetzsteon property, and you have to look at it today, this is dividing the state forest. Up at Lincoln, if it went through, we would be tying together portions of the forest at Lincoln but it would still be in several pieces. It is also lynx, grizzly bear, bull trout and cutthroat trout habitat. I spoke with FWP and they said they could work around that issue but you will have to mitigate it. When you mitigate that means you are not getting the full value for the timber product you raised on that land.

George Corn, Ravalli County Attorney, said others have spoken to you about the loss of hunting opportunities in one of the fastest growing opportunities in the state. I am going to hit on five points I hope you will consider. Fairness dictates you turn this down. Fairness requires the Bitterroot be given what other counties have been given. In 2005, FWP spent \$3.3 million in the Blackfoot. They have committed to spend another \$.13 million this year to buy conservation efforts. In 2005, the BLM and the Forest Service committed \$15 million to buy land in the Blackfoot. In 2006, the federal budget had another \$7.6 million to buy conservation lands in the Blackfoot. That is a wonderful thing for the Blackfoot. They had a banquet up there with public resources, the Bitterroot should be left with a few scraps.

Point number two: This exchange is flawed because agency biases and favoritism created a conflict of interest and predetermined the outcome of this exchange. This exchange means the Bitterroot loses 800 acres of prime elk hunting country, yet the DNRC supervisor in charge of this exchange and the FWP supervisor who blessed it are members of the Board of Directors of the Blackfoot Challenge, a group whose mission is to enhance, conserve, and protect the natural resources and rural lifestyles of the Blackfoot Valley. They serve on their official capacity and there is nothing wrong with them serving on that board, but to allow them to get this process in motion, to allow them to say this is appropriate, to allow them to get you to give preliminary approval to this was unfair to the Bitterroot. This favoritism has been blatant, it hasn't even been hidden, there is no reason for it to be. The DNRC supervisor probably said that DNRC wasn't interested in the Miller land exchange when Miller first came to them because he didn't have anything they wanted to trade. It wasn't until Mr. Miller came to them with the Blackfoot land that they felt it was appropriate to make the exchange. The problem with this of course is the public had the right to expect and demand from state officials and agencies they be neutral and objective when making public decisions. This is particularly important when you are favoring one group of citizens over another. It is highly corrosive to the public trust in government when decisions are controlled by favoritism and a predisposed bias. I want to point out on that score there is a history here too, both with DNRC and FWP. Just ten years ago the Ravalli Fish and Game Association, a group that has already spoken to you, prevailed in a successful suit against DNRC. They were ignored by DNRC and they had

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to sue the agency to make it follow the law when DNRC's actions favoring an out-of-state owner jeopardized the trophy big horn herd in the area. FWP should have stopped it at that point before things got that far. We're talking about land involving the same trophy ranch. The only thing that has changed now is, the locals are being ignored by the agency again, the ranch has a different owner ten years later.

Point three: The public notice and public participation requirements of the Montana Constitution have not been met. The affected public didn't have the opportunity to participate before DNRC asked the Board to make that preliminary approval. That's one reason you have such a hue and cry here. This would never have gotten this far had public participation been encouraged and meaningful notice been given for people to actively participate.

Point number four: Don't imitate the feds. Public lands are invaluable particularly in the western part of the state where populations are growing. The federal government is being widely criticized for selling off local lands. Given this, it would be rank hypocrisy for you as state officials to turn around and sell off state lands. It would also mean you would lose your legitimacy to criticize the feds in this area. I want to point out on this note that just last week the feds put on the block 800 acres in Pasture Draw which is in French Basin and within spitting distance of these 800 acres we're talking about here.

Point five: Don't let wealth dictate public land policy. This proposal is here because a wealthy out-of-state landowner wanted more privacy for a trophy ranch and he needed public lands to ensure his privacy. Nobody is criticizing his wealth as such but as public officials you should not allow wealth to deprive the public of hunting opportunities on public land. This man bought this ranch knowing it was surrounded by private lands. If you allow this exchange to go through what justification will you have to say no when he wants the next 100 acres to the east and the next 1,000 to the west. You won't have any justification for turning him down. Under the rationale of this exchange no state land will be safe whatever its intrinsic merits and no matter how valuable it is for local economy. Finally, there is nothing in state law that says you have to trade with someone just because they made an offer to you. There is nothing that triggers an obligation on your part simply because someone solicits you. This is a bad exchange, it should have never been brought to you by the agencies. I urge you to turn it down. He submitted his remarks for the record.

Representative Gary Maclaren, HD 89, said in the interest of brevity, I am going to make the remarks for Representatives Lake, Stoker, and Hawk. There has been a lot of discussion on the values of the properties involved, estimates have varied from \$1,300 per acre to \$4,300 per acre. The last figure I heard was an average of \$2,700 being placed on the Sula property. All in all, the Lincoln lands including \$320,000 that has been offered to sweeten the pot total up to about \$2 million. Whereas the lands in Sula are valued at about \$3 million. If this trade is to go through, taxpayers of Montana will be subsidizing Mr. Miller to the tune of about \$1 million. All of these discussions about dollars do not address the real question of what is the real value of the Sula land? Anyone who is familiar with the property knows this is prime elk, mule deer, and sheep habitat and it is some of the finest elk hunting ground anywhere in Montana. It can't be replaced. We support the efforts of the Blackfoot Challenge to acquire the lands in Lincoln but we believe that can be done with Habitat for Montana funds. There are \$8 – 10 million in that fund now depending upon who you talk to. We hope they can proceed with that. We also endorse the Wetzsteon deal, which is a totally separate stand alone deal from this exchange. We also understand Mr. Miller's desire to buy a prime piece of Montana. We'd all like to be able to do that. But if we do go through with this exchange, how are we going to replace that property? I would urge you to reject this exchange. It is not equitable dollar-wise, it is a good deal for Mr. Miller but a bad deal for the people of Montana.

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Greg Chilcott, Chair, Ravalli County Board of Commissioners, said we stand united in our opposition to this proposed land exchange. We don't agree that this land exchange is good for the citizens of Ravalli County. The Lincoln area has already realized millions of dollars in benefits. While we are happy for them and believe the Blackfoot Challenge process is viable and a good thing for Montana we don't want to do it at the expense of our citizens. It is hard for us to be objective. This is prime elk hunting habitat. This is part of our heritage that we wish to pass on to future generations. It is hard to elaborate on what the other opponents have said so I'll close asking you to please reject this.

Earl Little, Ravalli County Fish and Wildlife Association, said my wife and I love the East Fork we go up there we watch the grass bloom in the spring, we fish, we hunt, we hike. There is an area south of this land that is state land and for old folks like us we can walk there. You've had a lot of testimony about the value of it, we don't see a value. There is no value, it is too good. We don't want to lose it. Ravalli County is getting a lot of people. My point is, personally, we just don't want to lose that land.

Gary Marbut, President, Montana Shooting Sports Association, said the Association takes no particular position on this question. But I've been involved in the formation of public policy for 30 years and all of us who have been involved in this know it is hard to do without some kind of controversy going around. I would like to echo comments made by Senator Laible and George Corn. In this particular case we may have crossed the line in terms of bringing to the Board a proposal that has the effect of pitting one set of Montanans against another. That is not fair to the people of Montana. Whatever process that has allowed this to arrive in front of the Board pitting one group of Montanans against another is unfortunate. I would echo the comments of Senator Laible that it might be worth looking at the process that allows this to come to the Board in this shape.

Frankie Laible, Darby, said I am an elk hunter, don't take my land away.

Motion was made by Mr. McGrath to approve the Miller land exchange. Seconded by Ms. McCulloch.

Mr. McGrath said in support of my motion I would like to make a couple of points. I do agree with what Gary Marbut said and I think it is unfortunate that we have gotten ourselves into a situation where we have communities looking at what is fair to them as opposed to other communities. Maybe it is a process issue, I am not entirely sure about that. I do appreciate the comments that were made and the efforts that have been made from and by people of the Bitterroot to take a look at this. Our duty as the Land Board is to look at the state as a whole, to look at the value to the trusts and I think that the way we need to look at this as Land Board members. So that is what I've done. I would say by introduction that I do think, given the big picture, given what we are going to do, that we do have a net gain of accessible acres for hunters. I think this is a net gain for the people of the State of Montana and I think that is important. A net gain of 200 accessible acres. I am confident that we will be able to acquire the Wetzsteon property. There are some tax issues that are being discussed. It is a complicated issue but I am very confident we will be able to do that and that will conclude in the next two weeks or months. I also think it is important to talk about the value. There has been a lot of talk about the value of \$4,300 per acre and that people would be willing to buy this and subdivide this land. The fact of the matter is, that is not possible. This land was placed in a conservation easement years ago and it has been litigated. It has been litigated extensively. The courts have decided it and the conservation easement has been upheld that's why the \$4,300 per acre is not a valid appraisal. You can't divide this property. The Nature Conservancy has taken this issue through the courts with the previous owner, the Maddens. And you can't divide this property. If you look at it that way, there is no further access, you can't value it that way. That is the problem with our doing this as \$4,300 an acre. I am talking about the existing Miller Ranch now. The agreement is with the owner that he would put the rest of it into a conservation easement. So it is not a loss of habitat. The fact is it is a

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net gain of habitat. The wildlife will indeed be preserved. It is a place where the wildlife will be preserved indefinitely and that is a very important consideration. I wouldn't support this if that weren't the case.

Finally, I think we need to look at the future value. That is an extremely important consideration for us as a Land Board. The estimations are that over time the value to the trust of the use of the Sula land is \$1.4 million as opposed to the value of the land in Lincoln which is about \$3.2 million. That is a substantial difference, better than two to one, and I think that as a Board we have a fiduciary responsibility to look at that. My final point, and it was mentioned by Mr. Goetz, and I have spoken with people of the Nature Conservancy and if we don't do this then I think we are very seriously jeopardizing our ability to consolidate those lands that we have in the Blackfoot area. If you look at the map it is fairly obvious that those properties should be consolidated with our other holdings. If you put all that together it is something the state can manage with reasonable planning. It also increases habitat, it increases hunting access, it does a number of things. But as a whole it is a good deal for the state. I am concerned that if we don't do this we will not be able to do the consolidation, we will not be able to acquire the land in the Blackfoot. My understanding is they will be sold to private individuals. I think that would be a serious mistake.

Mr. Morrison said first of all, can the department address Mr. Corn's point about agency bias and in particular the role of the people involved in this transaction and their services on the Blackfoot Challenge board?

Ms. Sexton said the Blackfoot Challenge has been in existence for about 15 years and it has been involved with agency folks, local landowners, non-profits, businesses, a wide variety of people. Early on they asked agencies to participate with them at looking at the future of their area. DNRC has been involved, FWP has been involved. In fact, my husband was one of the starters of the Blackfoot Challenge so I could be accused probably of bias. Although I believe the work they have done is positive. This land was designated long before I came on board. They have been asked to participate in the ongoing development of this community effort. I think it is a noble effort. The bias... I think in my mind, they are working in their agency job, working with communities and I think as agencies it is our main job to work with communities. I personally hope to continue to work with the Bitterroot and the Blackfoot Challenge in finding ways to address issues not just issues that are in sync with the community. That is why we are working with Wetzsteon, working with the CB Ranch exchange, having an agency involved in the community takes time and effort. The Blackfoot Challenge is an example of that. I think it is not bias, I think it is department staff, whether DNRC or FWP whatever agency, working with communities and that is a very important thing. I think this property was found because there wasn't a lot of land that was available at a reasonable price in the Bitterroot. This was a piece of property that was available and I think it had the community support. My staff with the community support said that they then had the obligation to work with the community. I don't think there is any bias. I think it is agencies working with communities which is what we are here to do.

Mr. Morrison said the second question I have is for Senator Laible. Could you, just for the benefit of the people here who may not be familiar with your compromise discussion, show what you proposed and what Mr. Miller was not willing to discuss?

Using maps Senator Laible showed the parcel he proposed to use in the trade, approximately 458 acres. He said that trade makes the values more equal. The value of that is \$2,300 which is equal or close to the total value of the land for the Lincoln property. With this Mr. Miller will not have to come up with any additional sweeten the pot payment of \$320,000 and in actuality Lincoln will still get the lease to own the

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Lincoln property and would be able to acquire that property. My concern from the beginning was there was no common ground. I was looking for a compromise where Mr. Miller could get the land he most wanted. He wants a buffer between public land and his ranch. So in actuality he gets the land that is most important to him and in the same token the state gets the Lincoln property. It is unfortunate that we weren't able to find some consensus.

Mr. Morrison said Mr. Bugbee can you address the compromise proposal and why it was rejected?

Mr. Bugbee said from Mr. Miller's perspective the negotiations have been engaged for a couple of years now. The process followed was dictated by the department's policy, that included the two appraisals both done according to professional standards, both reviewed and accepted by the department. That set the ground for give and take. We went back and forth extensively on that. We had a hard time getting past the notion that the land is worth "X" amount on the market why should it be hypothetically projected at a higher amount. We came up with what we thought was a consensus and proceeded to the extent of buying the property in Lincoln to offer and trade. Since that time with the different issues that have come up, Mr. Miller has offered first \$160,000 then \$320,000, ultimately public access around the west end of Wetzsteon. I think all of these things are in the spirit of compromise and consensus seeking. We initiated the contact with Ravalli County Fish and Wildlife Association four years ago asking them for their help in finding properties, offering to work with them. We initiated contact later on. The struggle we've had through the process is that there are lots of folks that want to negotiate, there are lots of appraisers apparently and we've worked with the department the way we are supposed to. But the position offered ultimately by Senator Laible coming in through the department did not offer a compromise that said we want and we'll give. That to me is not the spirit of consensus. But in any event the characterization of Mr. Miller's interest is in the 800 acres. We think we have gone to extraordinary lengths in seeking a consensus and a win-win solution for everyone and we think that is what we have.

Mr. Morrison said when this matter first came before the State Land Board my reaction was that it was the first time in over five years that I've seen a proposed transaction that pitted one county against another. I didn't like that and it seems to me its gotten worse. We are now in a situation where the Wetzsteon property deal that looked like it had some potential is not as certain as it might be. We have a compromise that was proposed and rejected. We have more and more people in Ravalli County that are speaking with a more unified voice that this unacceptable to them and I have great sympathy for the good work of the Blackfoot Challenge and every interest in helping to make the transaction in that area near Lincoln materialize at some point but I don't think this is the way to do it. I am going to vote against this transaction.

Ms. McCulloch said Senator Laible, I am just trying to put this all in context of some sense of where this could go in the future so if more money was received for this land swap would that make it an okay deal then? Because we talked a lot about the amount of money, so if there were more money to purchase this would that make it okay?

Senator Laible said no. What you're seeing here just compounds the problem because the money in actuality is a donation to the department. The land swap has to be by statute, a stand-alone process. Equal land value for equal land value. Otherwise according to our statutes, if we start cutting off slivers and say okay we have traded this piece of land for only this many acres but the additional acres because they weren't compensated for we're going to pay money for those, then we're actually selling land. By our own statutes they should be sold through public auction. Adding more money into the equation doesn't solve the problem. Then again, we are open to the highest bidder in the state.

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Ms. McCulloch said Senator Shockley, do you agree with more money you still wouldn't go with the deal? Either a yes or a no. Or if you have a longer answer you can come up too.

Senator Shockley said I agree with Senator Laible on this.

Ms. McCulloch said is it not conceivable that we could ever increase the holdings of state lands in Montana?

Senator Laible said absolutely. I think it is in the state's best interest if we can increase the holdings. But we are acquiring land all the time. FWP just got some legacy money from the federal government to acquire more land. We are getting money through our fishing and hunting licenses to put into Habitat Montana. That's what that money is supposed to be used for. The question is when we acquire that land who manages it? And should not part of the process go to the common school? That is the whole process. That is why we have a Land Board.

Ms. McCulloch said I just want to make sure it was okay to increase state holdings. Another question, if the situation was reversed and the additional state land was going into the Ravalli County area would you also be opposed to it?

Senator Laible said I would be opposed to it based on the fact that the statutes would not allow us to make this trade in the way it has been structured. But this is the point I made before. If we were gaining another 1,400 acres of private land to be public, of course our public would look for it. It doesn't make it right and I wouldn't support it because it doesn't meet our statutes.

Ms. McCulloch said okay a quick question, one of the overwhelming themes here is that the land is being purchased by a rich out-of-stater, would it still be the same issue, would we still have the same conversation here if a fourth generation Montanan was the person who was buying this land?

Senator Laible said I don't think who is buying the land is as relevant as the fact that we shouldn't be giving up the land, particularly when the process we are using doesn't meet the statutes that we're supposed to abide by. I don't know many rich farmers that could afford to purchase land like this.

Ms. McCulloch said that was a question I pondered too, I don't know many poor people who could actually purchase this much. But anyway, that was one of the things through e-mails and letters I received it was always the rich out-of-stater and I wondered for future things like this if it was okay if the person was an out-of-stater.

Mr. Johnson said I am frustrated sitting here right now. I am a process guy and a believer that when a process is appropriately structured and applied equitably it leaves us to defensible results. I am convinced after this process that the process we are applying when it is applied to a controversial issue like this one is flawed. I don't know how we can get back in good conscience to proceed. I came in this morning expecting to vote in favor of this exchange. As I see the level of contentiousness here now and I hear the process addressed, I am going to have to join the Auditor in opposing this.

Ms. McCulloch said before we take a vote on this I have some comments to make. I am very glad to see you all here at a Land Board meeting, its been nice to see a number of folks in the audience. I would encourage you to continue that. This is the same speech I give to folks about school board meetings also. It is good. It is not a Democratic issue it is not a Republican issue, we've seen that from the folks that have been up here. To be honest, it is not a Ravalli County issue, it is not a Lewis and Clark County

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issue, it is not a Lincoln issue. This is a State of Montana issue. As the State Superintendent over 900 public schools in Montana and over 5.2 million acres of land in Montana, I don't think we can pick our favorite legislative district, we can't pick a favorite county, a favorite school district. I know the school district I taught at for sixteen years doesn't get to win any awards, doesn't get any monetary prizes, it doesn't look fair and it wouldn't be fair. I know that as the State Superintendent. I saw a headline this morning in one of the Bitterroot papers about Ravalli County land, that was the beginning of the headline. These are not Ravalli County lands, they reside in Ravalli County, these are Montana lands as part of the 5.2 million acres that we have deeded to the State of Montana. Most states that received acreage for their states to help support a number of things including children's education don't have any of their state lands any more. They are gone. So these 5.2 million acres support 145,418 school kids and their education. I can't afford to pit one county against one another. I thought about this when we were thinking in December about pitting county against county and I remember saying to myself I didn't like this because that is what it does. But to be perfectly honest it is state land, it is not this county's land or that county's land and I have to manage it as such. It made me think of an issue this morning because a friend is going through with her family because they have one child in college and one child in K-12. Because that child is in college they are having to cut back on family vacations and things they do as a family because they can no longer afford that. The issue came up, is that right for the child still at home because they are trying to pay for the child in college? Have they pitted one child against another? No. They have made a family decision. They have made the best decision they can for their family. That is exactly what I and the four other members of this Board has to do for the State of Montana. I don't get to pick a favorite. I do want to say to those legislators who were up here from both sides of the aisle, in the 2007 legislative session because we have heard so much today about the real value of this land and the real cost of this land I want you to give the same speech in the legislature about the cost and the value of public education when I bring to you the bills for the 2007 legislature that I am going to be asking for funding for schools. I want to hear that real value, real cost, real benefit sort of speech at the next session. I had a number of issues that we've gone through and I think we've settled those and I think the Attorney General went through quite well, but I want you to remember the beneficiaries. We talked about beneficiaries, they are the kids, the 145,418 kids in Montana. That is the important part of what we do.

Governor Schweitzer said in this room we have a couple of legislators from the Lincoln area and the Ravalli County area. Dan Weinberg the Senator from the Flathead and Representative Mike Jopek are here. The issue of state lands and disposition of state lands landed in the Whitefish area earlier and proactively they and others in the Flathead said we need a plan. We need a comprehensive plan, we need a plan for the future not just being reactive to any particular land deal. So those of you who are legislators from the Bitterroot I heard some discussion that those folks up in the Blackfoot have been doing this for some time and they have a strong organization. Yes. That is called planning. That is called deciding your destiny in advance so you are not reactive. So those of you who are in the legislature, those of you who are county commissioners in the Bitterroot, I'd take a long hard look at a comprehensive plan and continue planning because this is only part of a parcel, state land, federal land, private land, and find your community in a way your grandchildren will be proud of what you've done. There are some pretty good examples, the Blackfoot area, the Whitefish area.

Let's talk about process a little bit. I see now in this discussion we want the LFC to come in and look at the process. I think that is great. For those of you who have difficulty coming to these meetings, you should read the minutes. You'll find there has been question of the process from approximately this whole year in easements, land swaps, banking. What is the process? What is right, what is wrong? I think we ought to look where we've been for the last five or six years because as you know, this Miller land exchange started some years ago. It was brought to his Board as, "well, you know that the process is lengthy we don't really want to turn back now we have a lot invested here." Well, there has been a lot

invested here. There has been a lot invested by everybody at this table and a lot of people in this room. It doesn't mean we stop, this will continue. I want to make this very clear for those of you in the Bitterroot. What's been proposed here is a net gain of acreage. You can spin it any way you want and say well its not this particular land deal it is a land deal from a couple of months ago plus a land deal a month from now, but with the Wetzsteon this is a net increase in acres. That is what is on the table. Those of you who are in the Bitterroot you are not decreasing in acres. I cannot answer whether you are gaining in habitat or in value. We attempted to look at this by helicopter, get on the ground and look at this and see whether Montana is getting a good deal or not. We were weathered out and couldn't go. I think that my concern as I look at it now is simply this, I've heard a couple of opinions on whether the Wetzsteon deal would go through or not, is it a deal or is it not? I've heard we are very close but I have to tell you I've been in a lot of land deals as a private citizen and a "deal ain't a deal" until its done. I've had signed contracts, notarized signed contracts, and sometime before the last second these land deals blow up. We are not even close to having a signed deal on that. So if I am asked today to make this decision I am weighing all these things. This is important for us to get this land put together in the Lincoln area, it is very important. Is this the appropriate trade? I've heard some talk about geography, pitting one community against another, ladies and gentlemen, it's a land swap. Get used to it. We're never going to be able to find one ranch right next to another ranch and both people want to swap. That's not going to work, these will never be geography-neutral. The next time we're going to have some people from Stevensville area mad at the people down in Sula area because we are trying to trade north to south. We will continue trading county to county. I think Ms. McCulloch made a very good point here, our job is to manage all of Montana. So, if the conclusion of those of you who are opponents of this is that we're going to stop this because it is not geography-neutral well by definition we can't be geography-neutral. I think it is pretty close to it but on balance I am going to vote against this. I am voting against it for a couple of reasons. The first is that I don't have any idea what is going to happen with the Wetzsteon property, the second reason I am going to vote against this is that since I have been in business here I haven't seen a level of misintent in a community about any particular land swap and I believe there is probably some good logic in those of you in your community to say what is happening over in the Lincoln area is something that needs to be done this is just not the vehicle to get that job done. So I am voting against it. Not to say this is done, but for right now the Wetzsteon deal is not a deal, there is a great level of concern in the Bitterroot valley in this trade. I am going to assume you're collecting wisdom since you do know you are giving up a net increase of 200 acres. That's the math. This is a net increase of 200 acres but even with that information very clear, the folks in the Bitterroot are against this. I am going to work with the members of the Land Board and see if we can accelerate another option for the Lincoln area. But for this case, this deal today I am going to vote against it.

A vote was taken on the motion on the floor. The motion failed three to two. Mr. Johnson, Mr. Morrison, and Governor Schweitzer voting against, Mr. McGrath and Ms. McCulloch voting in favor.

206-1 SET MINIMUM BID FOR LAND BANKING PARCELS IN CHOUTEAU AND TREASURE COUNTIES

Ms. Sexton said in May the Board approved parcels in Chouteau County of 2,880 acres and in Treasure County of 2,229 acres to continue through the land banking sale evaluation process. We've done the cultural inventories and appraisals. Completion of the appraisals and notification to the lessees of appraised amounts allows us to recommend to the Board the minimum bid amount. Upon notification of the appraised value the two lessees who nominated the land and were notified of the appraised value did drop out of the process. Once we set the minimum bid for these parcels it allows DNRC to request earnest money from the lessee and notify the licensee, beneficiary, surrounding landowners, and agencies

required by rule that the parcels will be offered for sale at the minimum bid amount. We can also begin advertising these parcels. As you look at the minimum bids this comes back to the appraisal issue we have struggled with, whether it is exchange or land banking, that we're required by rule and by policy to have it appraised both ways, both with and without access, which was the case in the Miller Land Exchange and is here as well. I spoke with one of the lessees who proposed this and they wondered why it was appraised with access and we try our best to explain that once the surrounding landowner gains ownership of the property they will have access. Just as a note to the Board members, this is a continuing issue. But we are recommending the minimum bid here as has been our practice at the higher value, the recommended minimum bid then is the appraised value with access for these parcels. The protected income to the land banking process will be about \$800,000. Based on appraised values we recommend the minimum bid be set at the described amount in the agenda item. I want to state again, there are concerns that we have appraised these both ways with and without access and continues to be an education item and working with people who nominated the parcels for land banking. For exchanges we do appraise both ways.

Mr. McGrath said you covered this but I am still confused. If we approve this we would set the minimum bid, what if we don't get a minimum bid if somebody is willing to pay the lower appraised value. Is that then something that would be negotiated and brought to the Board or are they automatically eliminated if they do not meet the minimum bid?

Ms. Sexton said my understanding is if the minimum bid is not met then we go through the process again and set a lower minimum bid.

Tom Schultz, Administrator, Trust Land Management Division, said if we were at auction with the bid price set by the Board and nobody purchased it we would then come back and have to make the determination whether to lower the bid, we would consult the Board before we made an administrative decision on that. Whatever price the Board sets today, we will go to auction. If nobody bids we will not sell it for less than the minimum price.

Mr. McGrath said I understood that, my question is what is the next step if there is no interest.

Ms. Sexton said we would come back and set it at a lower minimum bid. And perhaps in consultation with those that are present we will bring to you a bid that has been proposed.

Motion was made by Ms. McCulloch to set the minimum bids for land banking parcels in Chouteau and Treasure Counties at the appraised value with access. Seconded by Mr. Johnson. Motion carried unanimously.

206-3 APPROVAL OF RIGHTS-OF-WAY APPLICATIONS

Ms. Sexton said this month we bring to the Board 62 requests for rights-of-way. There are requests for historic rights-of-way, new installation, public road for recreation, and I'd like to point out to you one for a fishing access site in the Echo Lake area. We have been working with FWP for this fishing access site near Echo Lake, it is about \$525,000 in an easement to DNRC for the site. There will be road improvements which will be beneficial to lease holders in the area. Some lessees are concerned about the increased traffic but this is public land and it will be a great benefit. People have been using this site and it will become a very positive addition to the Echo Lake area.

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This month the applications are #12837 through 12844 from Sheridan Electric Cooperative for electrical distribution lines; #13010 through 13013, and 13094 from Sun River Electric Cooperative for electrical distribution lines; #13279, 13301 through 13304 from Three Rivers Communications for communications cable; #13334 through 13346 and 13349 through 13358 from Marias River Electric Cooperative, Inc., for electric distribution lines; #13348, and 13364 through 13371 from Triangle Telephone Cooperative, Inc., for communication distribution lines; #13447, 13641 and 13642 from InterBel Telephone Cooperative for buried fiber telecommunications cable; #13650 from Rick and Donna Hilyard for a private access driveway; #13664 from Stella Weinheimer for a private access road; #13665 from Curt Hartman for a private access road; #13666 from Rachel Scott for a private access road; #13667 from Southern Montana Telephone for a buried telephone line; #13668 from NorthWestern Energy for overhead electric distribution line; #13669 from E Hanging T Ranch Co. for a private access road; #13670 from John Balkenhol for a private access road; #13671 and 13672 from Montana Department of Fish Wildlife and Parks for fishing access sites; and #13646 from Yellowstone Pipeline Company for a buried steel petroleum products pipeline.

Motion was made by Mr. Morrison to approve the rights-of-way package. Seconded by Mr. McGrath. Motion carried unanimously.

INFORMATIONAL ITEMS

206-4 FRIENDS OF BEAVER LAKE – CABIN SITE LEASE RATES

Ms. Sexton said the first information item was requested by Auditor Morrison and the representatives of the Beaver Lake area who are lessees. This is a concern regarding the lease rates and the cabin sites and it is outlined here as an informational item. We have nearly 800 residential leases on the state lands. We have experienced growth in the real estate sector and due to court actions, every five years we review our cabin site leases to determine what the appraised value is. We are required by law to charge a lease rate of 5% of the appraised value on cabin lease sites. This has gone through the courts in the 1990s. The rate was set at 3.5% and we raised it to 5% due to the court action. We are phasing this in. All the leases which have or will have a five-year renewal evaluation between 2000 and 2007 are being phased in from the old 3.5% to the new 5% rate. It may seem the rates are jumping every year but in reality the phase is in one jump divided by five. That's why it has been phased in and spread out equally over a five-year phase-in period. We did have a bid closing for some cabin sites in Western Montana and one of the sites was at Beaver Lake. Actually this lease site went for almost 11% over the minimum bid, the minimum bid was 5% of the appraised value of the site. As you can see, values in this area of Beaver Lake have risen in land values 248%, the average annual payment for a site in Beaver Lake is \$5,700 at the 5% rate. That has risen over the last years. Six leases are in the middle of the phase-in, six leases are at the beginning, and seven will be phased-in in 2007.

Robert Warren, President Friends of Beaver Lake, said there is a small group of us here today, we are a small organization and primarily we are comprised of the cabin site leaseholders. We are here because we feel we have solid grounds for believing that the current valuation process that is used to set the cabin site lease rates is flawed. We also have solid grounds for believing that the existing process was not fairly applied to the Beaver Lake cabin site leases in particular. On the ground, the process by which the underlying valuations were established is not transparent and we, as lessees, have had no reasonable access to records that afford us to review the actual information that has been used to establish our final property valuations. We are here to request the Board's assistance in establishing a fair and open

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valuation process for setting the cabin site lease rates and to help streamline a process that would rectify the current situation pertaining to, specifically, the uneven application of the existing rules to the current valuations at Beaver Lake. I was pleased to hear about the respect for process and fair application of the process across the board. Specifically, what we are going to ask you to consider for us is two requests: one, that the Board of Land Commissioners establish a fair and transparent valuation process which recognizes the distinction between fee simple estate values and lease estate values; and two, that the Board direct DNRC to place an immediate freeze on the current phase-in of the new appraisal values for the time necessary for any subsequent recommendations of the Land Board arising from our requests to be reported to and acted upon by the legislature. In our estimation the problem we are faced with today is that the lease rate increases will result in the forfeiture of many leases by long time lessees who are otherwise in good standing and will arguably result in a destabilization of the market for cabin site leases in general. We are certainly seeing this specifically in our area. While these results are patently unfair to current leaseholders they are also clearly not in the long term interest of the state trust. Ironically the problem has been created not by the newly applied rate increase from 3.5% to 5% but by the erroneous application of the current rate to a fee simple valuation in the appraisals by the Department of Revenue.

In 1987 the Forestry Division began to interpret the lease value of state land to be the appraised value of the state lands. Now, our Constitution requires only the achievement of full market value of the estate being conveyed. In this particular case the estate being conveyed is the leased estate, it is not the fee simple estate. This is an extremely important distinction. A definition of fee simple ownership is, "the greatest possible degree of ownership that is title free and clear of all encumbrances including easements, rights-of-way, liens," in other words it is the ownership of all legal rights. Significantly as lessees, we do not have a single one of those rights. The conditions of our leases require that we allow the public to have access across our property and lake front, they prevent us from being able to make any profit off of anything to do with our properties, leasing a building on the property, and it leaves all decisions as to any changes, upgrades, or improvements to our domiciles at the sole discretion of our local land administrator for that cabin site area. These conditions are entirely appropriate, we aren't arguing that. But they greatly influence the underlying value of the estate being conveyed. We believe these need to be taken under consideration. There are additional encumbrances including the fact that a lessee cannot achieve a long term or conventional mortgage. There is no tax advantage in the lease payment being made. The lessee has virtually no ability to obtain an investment value in the leased property either in equity or in appreciation. We believe it is entirely inappropriate for the DNRC to be applying the rates of 5% to a fee simple valuation of cabin site leased lands and we hope you will assist us in crafting a remedy.

In addition to addressing the improper use of fee simple valuations, we would also like to see significant elements influencing the value of the sites within a given cabin site area are being fairly taken into consideration in the valuation process. In the case of Beaver Lake there are no utilities within three miles of us, the roads are not maintained for winter travel, and basically that renders these as seasonal-use cabins by default. In the real world of the real estate market those are significant factors affecting the value of property. However, when we have approached the DOR they have insisted they do not need to take these factors into account as they are existing conditions of the lease as established between DNRC and the lessee. Furthermore, since there is no language in our leases that restrict us from year-round use we really have no argument about stating it is only a seasonal-use cabin, however, in the real world, again, any realtor is going to be held to the higher standard for attempting to sell a property that specifically does not have access or does have access. It leaves us as lessees in a poor position because we have two agencies insisting in concert that the other has the responsibility and authority to address our grievances. This is why we believe there must be a directive from the Board of Land Commissioners to the DNRC establishing how these valuations will be adjusted and to also make the basis of these

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valuations public knowledge. As an example, the DOR in citing privacy concerns and rights would not disclose which properties were used to establish like values for our Beaver Lake sites. However, what we do know for certain is that the DOR did not use the single most relevant piece of information available. There were 10 parcels on our lake that were privately held comprising of a few hundred acres with about a $\frac{3}{4}$ mile lake front, it is directly across from our cabin site leases. They were sold just a year prior to the 2003 assessment that was used to establish our current values and I want you to pay attention to these figures, the 200 acres I spoke of with a $\frac{3}{4}$ mile lake frontage was purchased by a single individual as a consolidation of the 10 parcels. The updated taxable value of that consolidated holding as of September 2005 was roughly \$280,000. If we take our 18 cabin site leases we have less than 30 acres right across the lake, conditions are the same except we have about half the frontage, access is the same by the same sets of roads, no development in the area, there were no wells, no septic, it is still quite primitive but there is no distinction between this property across the lake and our property. Our combined assessed value was over \$1.2 million. Thirty acres worth \$1.2 million, 200 acres with $\frac{3}{4}$ mile lake frontage on the same lake, current taxable value is \$279,000. One may be inclined to think the immediate solution to the problem is a reassessment of the current Beaver Lake site valuations, and as much as that is our goal, the method by which the solution is arrived at is of the utmost importance. To simply rectify the DOR's poor performance in assessing Beaver Lake site values without addressing the underlying problem of applying the assessment rate to the fee simple value is to leave all other Montanans who hold leases in the lurch. Instead, we are pressing the Board to direct the DNRC to place an immediate freeze on the phase-in values at the January 1, 2000, levels for the time necessary for the Board to consider our requests and for any ensuing recommendations of the Board to be reported to and acted upon by the legislature. This element is critical to prevent the forced forfeiture of current leases by worthy, long time stewards of state lands whose only fault is the inability to out bid the current influx of transient wealth that has threatened the fabric of our lives in Northwest Montana.

In closing my portion of this presentation, I would like to leave you one final thought. We, all of us present in this room, are the people of Montana, it is to all of us that the benefit of the trust lands improve and it is to our and our forebears enduring credit that we still have so much of our trust lands intact. It is our duty to protect this valuable asset as directed by both the Constitution and the Enabling Act for future generations. We should not stand by and watch our lands being given up to the highest bidder for short term gains that threaten the long term value of our trust. The 200-acre acquisition I referred to earlier was part of a larger acquisition of three times that size by the same individual and all of it is adjoining lands in that area. That particular landowner has in a very few short years accrued the largest number of violations on record for shoreline wastewater, sewage, and view shed infractions in the Flathead Valley. The fines are currently our only tool against these abuses but when your wealth is limitless fines are meaningless. May we ask what are the values of stewardship to our long term obligations to our lands? How can we possibly imagine we are serving the long term interests of the trust by inviting this type of largess through our policy of demanding maximum revenue right now. It is a policy that is taking Montana lands out of the hands of the working Montanan, consistent with our obligations to serve the welfare of the people of our state. Our true long term obligations are paramount to our short term interests and we need to take a more careful and thoughtful look at the value of the role of stewardship that we, as citizens, bring and have brought to the preservation of our remaining state treasures.

At this time, Governor Schweitzer left the meeting and handed the gavel to Ms. McCulloch. He thanked everyone, in particular Senator Weinberg and Representative Jopek, for their leadership not only on this issue but on the planning issues in the upper Flathead. He said my comments to the folks in Ravalli County were very pointed that they should look to your leadership and the leadership of the Flathead to find some resolutions for some of the concerns they are going through now.

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Betty Baldwin, lessee on Beaver Lake, said we have a chart to show how long leases on Beaver Lake have been held. There are at least six that have been maintained by the original leaseholders for over 45 years. There are eight more leases that were added over 25 years ago and all but a couple have been held by the original leaseholders. The cabin sites that have been held for just a few years are ones that have been given up or improvements sold because of a large increase of lease fees. They could not afford to keep them. If the leases are not made more affordable more of these leases will be given up which will be a heartbreaking decision. The leaseholders, all but one, are long time Montana residents and taxpayers. I would like to give you a brief history on these leases. In the late 1950s my father worked for several years with Stillwater DNRC toward doing cabin sites at his favorite fishing lake and located 900 families who expressed interest in leasing lots on Beaver Lake so the original ten lots were leased. The original leases were for 99 years which at that time were listed as summer cabin sites useful only three months per year. This is stated on the lease along with other restrictions. I believe there are at least six, possibly more, of the original leaseholders which are still there. The lease on the lot we have has been in our family for over 45 years and has been enjoyed by six generations. We've had family picnics, quiet weekends, and the excitement over the years of watching our children, grandchildren, and great grandchildren catch their first fish, enjoying quiet times sitting on the porch, or on picnic table watching the deer come down to the lake for their evening drink. To me this is a part of their Montana heritage and I would like very much to be able to keep it for them. The lessees on Beaver Lake are mostly retired people on fixed income and not wealthy. We have been all good Montanans, good stewards of the lands and have treated the area with respect. We are now faced with unreasonable lease fees and a lot of us will be unable to continue to retain our leases. I understand the appraisals on these leases were based on the sales of property on other small lakes, but these properties have good roads, utilities, year round homes, and one at Crystal Lake in Eureka has a golf course and an airport. The lease on our lot, ½ acre, in 2008 will be \$5,405 per year, this adds up to \$17,638 in three years. What will the fee be when it is time to renew this lease? The appraisal on lot 1 went from \$20,330 to \$108,000, that's an increase of \$87,700. I understand land directly across the lake from the lease in 2004 was at \$880.00 per acre. Please help keep some of our Montana rights for Montanans not to out-of-staters or investors who come here and take their profits out of state.

June Munski-Feenan, Beaver Lake lessee, said most of this has been said, we are the newcomer on Beaver Lake because that chart shows some people on there 40 years, and we've been on there 31 years. We have a cabin on Beaver Lake and have been using it because it is an affordable vacation spot which it is for most of the people who are on that lake. I understand the Board has an obligation to maximize the return on state trust lands however, we do not feel the scale of the increase is the true picture of these leases. For over 31 years we have served as stewards of this property in addition to simply being lessees. Being good stewards the state gets more than just money from the leaseholders. Two years ago the caterpillars exhibited a major infestation on Beaver Lake, we took twenty garbage bags and put the eggs and larvae in and hauled them to town to burn. We continuously we get noxious weeds and we take care of that, we have to plow our roads in the winter and fill potholes with gravel. For more then 20 years of tests we have kept records for the Flathead Basin Commission on the lake for the temperature, clarity, keep track of the wind temperature and what the waves are like and animals on the lake. This has all been reported to the Flathead Basin Commission because Beaver Lake is one of the purest lakes around, it flows into Whitefish Lake down into Flathead Lake. We pick up the trash in the area and keep it clean, we had three wedding at our place, the Good Sam Club comes up to our place every summer for a picnic, senior citizens can come and use our lot to fish and the handicapped utilize the lake. I am also contacting the Audubon Society to check for birds that are in that area. I know this last best place is in good hands when I see all these people taking care of it.

Senator Dan Weinberg, Senate District 2, said I am here in support of these folks today but I don't take a real provincial view, I think what we're talking about today can be applied throughout the state. I learned a little bit about Montana history since I've been here and what I've learned is we have a history in Montana of giving away an awful lot, our copper, our timber, water and soon our electricity and power and now its our land. What we see is folks coming from out of state and buying up huge areas, they don't pay income tax here, which is the most fair tax we have, they just buy our land and fence it off and keep it for themselves. Why does that matter as far as leases? Well, it has the same effect. If we continue to raise leases and force folks like these folks off their lands, eventually the leases will be bought by out-of-state vacationers, folks who are here a few months a year, folks who don't pay income tax. We have to really look at that. There is a lot of talk about traditional values and part of the traditional values is to maintain leases for access for the folks who have those for years and years. These are the folks who clean up, these are the folks who leave their sites open for other people to use the lake. It makes sense that we maintain leased areas for regular folks not just for the highest bidder. I had the honor of walking the Governor down the aisle when he gave his first State of the State address and I remember he stood up there and very proudly said that Montana is open for business. I don't remember that he said Montana is for sale. By continuing to raise lease rates what we're saying is Montana is for sale. Maybe it takes a guy like me who came here fairly recently to see what's going on. We are losing what is most precious, that our regular folks can use our lands in the way we traditionally use these lands. The same thing is happening in Columbia Falls, there is a gun club over there and their lease rate is going up and they are talking about having to move the gun club. That club deserves to stay there. There are 350 members and a lot of them grew up at that gun club learning how to use their guns and they shouldn't be forced off the property. Those are the folks who deserve to stay. I am very aware that Montana has a lot of needs, the state has needs of course, the school kids have needs but lets not fill those needs on the back of regular folks who have used these lands for generations, lets not do it to them. Lets find other ways, lets talk about economic development, lets talk about a better way to invest our money in the state. I am here today to ask the Board to freeze those lease rates so the process can continue and we can take it up in the legislature with your help and come to a better way to manage these leased areas.

Representative Mike Jopek, House District 4, said these good folks are asking you to freeze the phase-in, they are not asking you to mess around with 3.5% - 5%, but to freeze that phase-in valuation that is driving this right now. This is the same kind of thing we do on private property all the time. Remember when we were doing appraisals every four years then it went to 20 and then to six, and we were phasing that in to try to mitigate that impact. We are looking at the same kind of stuff. Anytime you see increases to the tune of 250% that's a big burden and we should look at how to make sure some of these Montanans who have been holding these leases for nearly 50 years will continue to hold these leases into the future. There are good solutions, we come from a community that is the fastest growing community in the State of Montana. Whitefish increased market values of 63% over a 5 year period. That's faster than anywhere else in Montana, twice as fast as Kalispell, three times as fast Billings or Missoula, and so we are a prosperous community but there are some consequences as a result and these are some of those. These valuations are increasing much faster than valuations on private property. I ask you to look at that, I ask for guidance to the agency such that the agency would work with the representative of these good folks who have hired an attorney and look for some of those solutions. You have to be aware that the next phase-in happens at the end of this month so as we're waiting, and that's why we are looking for the freeze, we are trying to stabilize the process right now because there might be good solutions come forward so these folks don't lose their ability to remain on the land. There are good legislative solutions as well, I'm happy to carry anything that this body, the agency, deems appropriate in the House, I am happy to work in conjunction with the agency to craft some solutions but again, freezing the phase-in is the step to get us to the solution. And that solution is pending in the months to come, maybe the agency comes back next month and says here's a good solution, maybe it takes two months, but we are willing to

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work through that process. But doing nothing, we know what happens, all these good folks lose their leases, the leases go out to the highest bidder and in five years a 250% increase and in another five years another 250% increase after that. There is something broken in the appraisal process and its time to look at it and recognizing the appraisals come from the DOR the leases are done by the DNRC. We are stuck between the two agencies.

Mr. McGrath asked have the leaseholders gone through the appeal process already? Has that been done? The statute provides that if you don't agree with what the assessed value was there is an appeal process.

Rep. Jopek said as a group, no. Individually some have appealed the process.

Mr. McGrath said have the timelines expired for that? There is a process to challenge and one of the issues you raised was the 200 acres across the lake versus the smaller parcels which would be a very legitimate issue in terms of the appeal process.

Rep. Jopek said I don't believe these good folks have. We've looked at some other cases of appeal processes and have had them on very similar situations and what ends up happening is DOR says it is based on the leases and the DNRC says it is based on the appraisal process. So there is something broken that is not being looked at. If they did go through the appraisal process I have a feeling they would end up in the exact same situation as other folks who preceded them.

Mr. McGrath said I am not sure about that. The DOR is very used to challenges to their assessed value process and if you haven't done it and the time hasn't run, I strongly urge you to do that to preserve your rights.

Mr. Morrison said that effectively freezes it during the appeal.

Mr. Warren said procedurally and specifically one of our requests would be is there a method by which the process could be streamlined? Currently it is required that every single person, individually, take this case forward on their own behalf. We are currently not allowed to approach the DOR as a group of lease holders even though what we are trying to accomplish is a valuation for all contiguous sites. It would be a great benefit to us if we were to be required to hire legal counsel to represent us individually if we were allowed to do that by procedure as a group to be represented in this case which just seems to be fair and makes sense.

Mr. McGrath said you can do that under existing process but you still have to take each case on a fact-by-fact basis. You have to look at each site individually. That's in your favor, you don't want to do that different. But you could certainly agree to hire counsel jointly and have counsel jointly process the appeal. You can certainly do that and that would be a very good and economical way to do it. But if you are going to appeal you need to have the consideration of each issue on its own merits you don't want to waive that because some people may have a stronger case than somebody else.

Mr. Warren said I do appreciate what you're saying but I don't know that I necessarily agree that it would be to our advantage to take that approach. I would still see advantages...

Mr. McGrath said I am not your lawyer but I'll give you advice anyway. If you haven't gone through the appeal process and you still can, start that process. For one thing that will freeze the assessed values.

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Mr. Morrison said it does effectively freeze the process while you're going through the appeal process and the more appeals you have the longer it takes to adjudicate all of them. And so I agree with the Attorney General that it would be a good initial step for your challenge. I think you really have to exhaust the existing process as you're asking for the process to be changed. It makes sense in terms of the timeframe and it also demonstrates that you are doing as much as you can on your end. I would like to ask if the DNRC could address the specific suggestions regarding changes in the appraisal or problems in the appraisal process separate and apart from the individual valuations of the property and come up with some kind of response that you can share with us next month at our meeting. Perhaps staff can work together and decide if there is anything that can be done by way of an action item or whether any action that needs to be taken here is up to the legislature.

Mr. Johnson said Director Sexton, in conjunction with Auditor Morrison's request, would you have department legal counsel also clarify all the authority with regard to why we found our ability to impact some of these fee related policies is not unlimited and see just where we stand in that regard as well?

Ms. Sexton said we certainly will. We will give you a briefing on that.

Mr. Morrison said I'd like to add something else. The Supreme Court has said very specifically that this Land Board is prohibited from serving the interests of cabin lease holders. We must serve the interest of the beneficiaries of the trusts. The points you make are very, very compelling and I have seen first hand what is happening and it's heart wrenching when you see what has been happening to families who have been there forever. Somehow we have to figure out a way to address that. I am very sympathetic to the cause and I'd like to do everything we can to address it, but just understand we are doing it under the parameters that have been set by the Supreme Court based on our Constitutional responsibility and our responsibility under the Enabling Act. We want to continue to work with you but we have brackets around us.

The following three informational items were postponed until the March 20, 2006, meeting of the Board of Land Commissioners.

206-6 UPDATE ON STATUS OF LAND BANKING PROGRAM

206-5 LAND BANKING REAUTHORIZATION AND PROPOSED CASH LEASING
LEGISLATION

206-8 UPDATE ON DEPT CORRECTIONS PINE HILLS SCHOOL PROPERTY SALE

PUBLIC COMMENT

Trent Toms, The Wilderness Sportsmen Club in Seeley Lake, said we are a gun club, we've been leasing land from DNRC for about 15 years and our lease has increased to the point where we're going to be out of business. That concerns us quite a bit. We are a small community of a lot of retirees, we don't have a lot of high dollar people around. We have this gun club, we keep it clean and we keep it orderly and it is a safe place for the residents and the people that influx in the summer. We feel we need to have this place for a safe place for them to come and shoot. There are a lot of houses springing up around and we can't just go and shoot in a coulee or gully like we used to do so it is quite important to us that we maintain this. There has been a lot of talk this morning about the price of land so we're going to make it easy for

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you, we're going to ask you to give this land to us so we won't be haggling over the price. I only had about two days to get some signatures and letters together that support this idea of letting us run the state land, it belongs to us anyway, and keep it clean and orderly.

Gary Marbut, President Montana Shooting Sports Association, said I'm here on behalf of my organization urging the Board to take seriously the proposal from the Wilderness Gun Club in Seeley Lake to help them keep their shooting range in operation. Certainly the gun culture is wide and deep in Montana, we estimate as many as 90% of the households in Montana contain firearms, and we think it is important for these people to have a safe and suitable place to shoot. I have been working on this for a long time starting with the shooting range development program which I took to FWP in 1987 and began in 1989, the Shooting Range Protection Act in 1991, the Shooting Range Development Act in 1999, all of those things working to try and ensure that the people of Montana have a safe and suitable place to shoot. I won't take your time to go over the details of the proposal but I think you'll find we tried to cover all the bases we can cover and make this an appropriate thing for the Board to do. There is some information addressing the impact on the school trust lands and we believe that even though there might be a possibility to donate this land to the Gun Club that still it would have a net positive effect on the trust. We ask the Board to refer this to DNRC for some review and analysis and we ask you to give them some charge to figure out how to solve this problem. If there is some reason why our request that the state just transfer this land to the local club won't work, we would like to hear a counter proposal. Included in my information to you is support from the National Rifle Association and twenty legislators who agree with the proposal, and I also have a letter from FWP that supports the proposal.

Paul Murphy, North Valley Sportsmen Club, said the North Valley Sportsmen Club leases 27 acres north of Columbia Falls for a shooting range. We had about 350 members last year. The lease is reevaluated this year for the next five year period. The lease went from \$3,961 last year to \$9,376.50 for each of the next five years. This required our membership dues to more than double, and hopefully enough members will be willing and able to afford the increase and will be able to cover our costs. Discussions with DNRC personnel indicate that they accept the assessed value of the land will continue to increase at this rate for the next 20 years. Our lease will be up for renewal in 2011 for another 15 years. The DNRC did not see there would be a problem renewing the lease at that time but felt that sometime after that we would either be pushed out or priced out of the property. For that amount of money we will have to close the ranch and then people will be shooting in the woods on state land, federal land or wherever they can find a place. It is a lose-lose situation. Unless someone else leases the land the state will lose the money, and we lose a very good place to shoot. Whitefish and Seeley Lake face the same problems. State law requires the state protect the ranges in existence, so what happens when the Constitutional requirement for the lease makes it unaffordable or selling and development makes it a real safety issue. To continue this Montana heritage we need to find a way to support the state law and keep the land affordable, after all we are providing a public service. Some possibilities are to freeze the lease rates, transfer title of the land – that is take it out of trust land, require conservation easements on lands surrounding the ranges and radius. We need help while there is still time to find a good solution. State land leases represent a small percentage in the school formula, we were told by an attorney that the most is probably 4% - 7%. Mr. Marbut mentioned safety and the interest of safety has been very important for this club for many years. I taught education for 36 years and I am very concerned about safety.

Motion was made by Mr. Johnson to adjourn. Seconded by Mr. McGrath.